

2014

Using a Civil Suit to Punish/Deter Sponsors of Terrorism: Connecting Arafat & the PLO to the Terror Attacks in the Second Intifada

Jeffrey F. Addicott

St. Mary's University School of Law, jaddicott@stmarytx.eduFollow this and additional works at: <https://commons.stmarytx.edu/facarticles>Part of the [Law Commons](#)

Recommended Citation

Jeffrey F. Addicott, Using a Civil Suit to Punish/Deter Sponsors of Terrorism: Connecting Arafat & the PLO to the Terror Attacks in the Second Intifada, 4 St. John's J. Int'l & Comp. L. 71 (2014).

This Article is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons at St. Mary's University. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Digital Commons at St. Mary's University. For more information, please contact sfowler@stmarytx.edu, jcrane3@stmarytx.edu.

USING A CIVIL SUIT TO PUNISH/DETER SPONSORS OF TERRORISM: CONNECTING ARAFAT & THE PLO TO THE TERROR ATTACKS IN THE SECOND INTIFADA

Dr. Jeffery Addicott*

INTRODUCTION

*“All that is necessary for evil to triumph is
for good men to do nothing.”¹
-Edmund Burke*

As the so-called “War on Terror”² continues, it is imperative that civilized nations employ every possible avenue under the rule of law to punish and deter those governments and States that choose to engage in or provide support to terrorism.³

*Professor of Law and Director, Center for Terrorism Law, St. Mary's University School of Law. B.A. (with honors), University of Maryland; J.D., University of Alabama School of Law; LL.M., The Judge Advocate General's Legal Center and School; LL.M. (1992) and S.J.D. (1994), University of Virginia School of Law. This article was prepared under the auspices of the Center for Terrorism Law located at St. Mary's University School of Law, San Antonio, Texas. The author wishes to acknowledge with special thanks the superb efforts of research assistants and senior fellows for the Center for Terrorism Law, Evan Anders and Elizabeth Germano who supported this article with outstanding research and editing.

¹ WILLIAM J. FEDERER, *AMERICA'S GOD AND COUNTRY* ENCYCLOPEDIA OF QUOTATIONS 82 (1994).

² See Jeffrey F. Addicott, *Efficacy of the Obama Policies to Combat Al-Qa'eda, the Taliban, and Associated Forces – The First Year*, 30 PACE L. REV. 340, 344–47 (2010) (discussing the confusion associated with the term War on Terror and supporting an Obama term “War Against Al-Qa'eda” as better suited to describe the conflict).

³ See generally John F. Murphy, *The Control of International Terrorism*, in NATIONAL SECURITY LAW, 458–61 (John Norton Moore & Robert F. Turner eds., 2005). There is no international definition of terrorism. Numerous attempts have been made over the years to develop an international definition for the term. The best came from former Secretary General of the United Nations, Kofi Annan. See Serge Schmemmann, *Man in the News: UN's Candid Reshaper Kofi Atta Annan*, N. Y. TIMES (Oct. 13, 2001), <http://www.nytimes.com/2001/10/13/international/13ANNA.html>. Echoing the Geneva Conventions' definition of a war crime, in 2005 Annan offered the following definition of terrorism to the General Assembly:

While the traditional use of criminal or military action are often the responses most likely to be invoked against a regime that engages in terrorism, the use of civil litigation with the potential to render large civil judgments against the regime and regime elites have fantastic potential to punish acts of terror and to deter future acts of terror.⁴ Accordingly, the use of civil litigation to punish State-sponsored terrorism is a critical component in solving what one international expert labeled the “counter-terrorism puzzle.”⁵ In the groundbreaking book, *Legal Issues in the Struggle Against Terror*,⁶ University of Virginia School of Law Professor John Norton Moore, devoted a chapter to the issue of terrorism civil litigation. Entitled, “*Civil Litigation Against Terrorism: Neglected Promise*,”⁷ Moore correctly observed that “turning law loose [via civil suits] on terror states, rather than simply on tobacco companies and corporate targets, will be greeted by broad public support and understanding.” In other words, understanding the reformatory impact of large civil judgments, why not aggressively employ this tool against regimes that engage in terrorism?

Proponents of using civil litigation against a regime that engages in terror understand that there are obstacles. Apart from overcoming traditional concepts of sovereign immunity and gaining support from the American executive branch (particularly in domesticating any judgment obtained), the process of litigation against terrorist regimes is time consuming, expensive, and difficult to prove in a court of law. While the first four factors may be self evident, the issue of causation centers on the fact that the regime that engages in terrorism is always quick to deny any

[A]ny action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants, with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.

⁴ Jack D. Smith, *Disrupting Terrorist Financing with Civil Litigation*, 41 CASE W. RES. J. INT’L L. 65, 77–83 (2009) (discussing the emergence of civil litigation as a means to disrupt terrorism).

⁵ See generally, BOAZ GANOR, THE COUNTER-TERRORISM PUZZLE (2005).

⁶ LEGAL ISSUES IN THE STRUGGLE AGAINST TERROR (John Norton Moore & Robert F. Turner eds., 2004).

⁷ John Norton Moore, *Civil Litigation Against Terrorism: Neglected Promise*, in LEGAL ISSUES IN THE STRUGGLE AGAINST TERROR 197, 233 (John Norton Moore & Robert F. Turner eds., 2004).

connection with the act of terror.⁸ Indeed, the regime that uses terror as a tactic almost always employs it secretly, realizing that to do otherwise would bring down immediate condemnation as well as the real possibility of overt acts ranging from embargos to the use of armed force from the targeted nation as well as the civilized world. Naturally, since the terrorist regime wishes to avoid responsibility, they deny accountability. The use of terror is conducted in secrecy. In essence this is the definition of State-sponsored terrorism, where a regime “directly but secretly uses its own resources to sponsor acts of terrorism against another country.”⁹ In turn, State-supported terrorism refers to the practice of a regime providing resources or finances to a terrorist group for the purpose of training, logistics, or execution of terror attacks.¹⁰

The purpose of this paper is to highlight the conundrum of establishing the factual connection between the regime that secretly sponsors or supports terror and the actual acts of terror. To hold a regime responsible for terrorism, accountability must be established. In this context, the ongoing civil action of *Sokolow v. The Palestine Liberation Organization*,¹¹ filed in the United States Federal Court for the Southern District of New York in 2008, perfectly illustrates the dilemma – on the one hand the offending regime disavows acts of terror while on the other hand it secretly supports and orchestrates terror.

The *Sokolow* case was filed under the Antiterrorism Act, 18 U.S.C. 2331,¹² by the survivors and families of U.S. citizens murdered and wounded in terror attacks carried out between January 8, 2001 and January 29, 2004, in or near Jerusalem, Israel, during the so-called Second *Intifada*.¹³ The lawsuit alleges that the Palestine Liberation Organization (PLO), The Palestinian Authority (PA), and various “JOHN DOES 1-99”¹⁴ (the organizations and groups that acted under the support and direction

⁸ See Jeffrey Addicott, *American Punitive Damages vs. Compensatory Damages in Promoting Enforcement in Democratic Nations of Civil Judgments to Deter State-Sponsors of Terrorism*, 5 UNIV. OF MASS. ROUNDTABLE SYMPOSIUM L. J. 92 (2010) (discussing the legal hurdles in obtaining civil judgments).

⁹ JEFFREY F. ADDICOTT, *TERRORISM LAW: MATERIALS, CASES, COMMENTS* 5 (7th ed. 2014).

¹⁰ *Id.*

¹¹ 583 F. Supp. 2d 451 (S.D.N.Y. 2008).

¹² *Id.* at 453.

¹³ *Id.* at 454.

¹⁴ *Id.* at 451.

of the PLO and PA) “offered and provided those, acting on their behalf, with substantial material and pecuniary inducements and incentives to plan, organize and execute acts of international terrorism, inducing the terrorist attacks in which plaintiffs were harmed.”¹⁵

According to the Israel Security Agency (Shin Bet or Shabak), between 2000 and 2004, at least 1,028 innocent people died as a result of Palestinian terror attacks. An additional 5,760 innocent people were wounded during the same period.¹⁶ From the start of the Second Intifada, American citizens were among those murdered and wounded. A partial list of the American civilian victims, verified and publicized by the United States Congress in House Concurrent Resolution 119, was released on March 26, 2003.¹⁷

¹⁵ *Id.* at 454.

¹⁶ *Fatalities and Injuries in the Last Decade*, ISRAEL SECURITY AGENCY, <http://www.shabak.gov.il/English/EnTerrorData/decade/Fatalities/Pages/default.aspx>. (last visited Mar. 13, 2013).

¹⁷ H.R. Con. Res. 119, 108th Cong. (2003).

- On October 30, 2000, United States citizen Esh-Kodesh Gilmore, 25, was shot in Jerusalem;
- On December 31, 2000, Rabbi Binyamin Kahane, 34, and his wife, Talia Hertzlich Kahane, both formerly of New York City, were killed in a drive-by shooting near Ofra;
- On May 9, 2001, Jacob 'Koby' Mandell, 13, of Silver Spring, Maryland, was killed in an attack near Tekoa;
- On May 29, 2001, Sarah Blaustein, 53, of Lawrence, New York, was killed in a drive-by shooting near Efrat;
- On August 9, 2001, two United States citizens, Judith L. Greenbaum, 31, and Malka Roth, 15, were killed in the Jerusalem Sbarro pizzeria bombing;
- On November 4, 2001, Shoshana Ben-Yishai, 16, of New York City, was shot and killed during an attack on a Jerusalem bus;
- On January 15, 2002, Avraham Boaz, 72, of New York City, was killed in a shooting near Bethlehem;
- On January 18, 2002, United States citizen Aaron Elis, 32, was killed in a shooting in Hadera;
- On February 15, 2002, United States citizen Lee Akunis, was shot and killed near Ramallah;
- On February 16, 2002, Keren Shatsky, 14, of New York City and Maine, and Rachel Thaler, 16, of Baltimore, Maryland, were killed in a bombing in Karnei Shomron;
- On February 25, 2002, United States citizen Moran Amit, 25, was stabbed and killed in Abu Tor Peace Forest, Jerusalem;

Ultimately, of course, Yasser Arafat, President of the Palestinian National Assembly (PNA), Chairman of the PLO, and senior leader of the Fatah political party, bears direct responsibility for the terror attacks against the American civilians that occurred during the Second Intifada, resulting in the death and wounding of hundreds of innocent civilians.¹⁸ President Arafat either directly orchestrated the terror attacks, or encouraged others to commit the terror attacks. In either case, given his supreme leadership role associated with the Palestinian people, Arafat bears direct legal responsibility for the murders and injury. While portraying his government and himself to the civilized world as beacons of “peace” and denouncing “terrorism,” the objective reality is that Yasser Arafat and his regime worked tirelessly to promote and encourage brutal acts of murder by means of terrorism in order to achieve personal and political goals.¹⁹

-
- On March 24, 2002, Esther Kleinman, 23, formerly of Chicago, was shot and killed near Ofra;
 - On March 27, 2002, United States citizen Hannah Rogen, 90, was killed in a bombing at a hotel Passover seder in Netanya;
 - On June 18, 2002, Moshe Gottlieb, 70, of Los Angeles, was killed in a bus bombing in Jerusalem;
 - On June 19, 2002, United States citizen Gila Sara Kessler, 19, was killed in a bombing at a Jerusalem bus stop;
 - On July 31, 2002, five United States citizens were killed in a bombing of a Hebrew University cafeteria: Marla Bennett, 24, of San Diego, Benjamin Blutstein, 25, of Susquehanna Township, Pennsylvania, Janis Ruth Coulter, 36, of Massachusetts, David Gritz, 24, of Peru, Massachusetts (and of dual French-United States citizenship), and Dina Carter, 37, of North Carolina;
 - On March 5, 2003, Abigail Leitel, 14, who was born in Lebanon, New Hampshire, died in a bus bombing in Haifa.

¹⁸ See JIM ZANOTTI, CONG. RESEARCH SERV., RS34074, THE PALESTINIANS: BACKGROUND AND U.S. RELATIONS (2012).

¹⁹ Jak Phillips, *Top 10 Nobel Prize Controversies, Yasser Arafat*, TIME, (Oct. 7, 2011), http://content.time.com/time/specials/packages/article/0,28804,2096389_2096388_2096380,00.html.

I. HISTORY OF YASSER ARAFAT AND THE PLO

*"We know only one word: jihad, jihad, jihad. When we stopped the intifada, we did not stop the jihad for the establishment of a Palestinian State whose capital is Jerusalem. And we are now entering the phase of the great jihad prior to the establishment of an independent Palestinian State whose capital is Jerusalem."*²⁰
-Yasser Arafat

Despite claims that he was born in Jerusalem, Yasser Arafat was actually born in Cairo, Egypt.²¹ In turn there are numerous conflicting reports relating to his involvement in the Arab-Israeli conflict. Arafat's "war stories" of being driven out of Gaza by Israeli tanks in 1948 and vowing to dedicate his life to the "recovery of [his] homeland" do not align with the historical facts of the time.²² There is, however, firm evidence that at least by the mid-1950's that Arafat had become a guerrilla fighter involved in raiding Israeli territory and causing casualties.²³ Arafat's ultimate life goal is best stated in his remarks made while receiving the peace prize in 1996 in Stockholm, Sweden (for his work on the 1993 Oslo Accords): "[To] eliminate the state of Israel and establish a purely Palestinian state."²⁴

Before Yasser Arafat was elected as Chairman of the PLO in 1969, he established the Fatah party.²⁵ At the time, Fatah was one of several guerilla/militant organizations that engaged in violence and terrorist attacks which they termed as an "armed struggle," against Israel but which in reality was primarily focused on the murder of innocent civilians and not engaging in combat with Israeli military or police. In fact, Fatah criticized the PLO for being too docile in regards to Israel.²⁶ In March 1968, a meeting

²⁰ *In the Words of Arafat*, N.Y. TIMES, (Aug. 4, 1997), <http://www.nytimes.com/1997/08/04/world/in-the-words-of-arafat.html>.

²¹ EFRAIM KARSH, ARAFAT'S WAR 10-12 (2003) (describing Arafat's Egyptian accent and need for assistance in speaking Arabic with the Palestinian accent coupled with the location of his birth certificate in Cairo).

²² *Id.* at 13-14.

²³ *Id.* at 15.

²⁴ *Id.* at 57.

²⁵ See generally KENNETH KATZMAN, CONG. RESEARCH SERV., RS21235, THE PLO AND ITS FACTIONS (2002).

²⁶ See Rashid Hamid, *What is the PLO?*, 4 J. PALESTINIAN STUD. 4, 99 (1975).

took place between the PLO, Fatah, and the Popular Front for the Liberation of Palestine (PFLP), which resulted in the merging of these organizations. As a result of this merger, the Fatah and the PFLP were given 50 of the PLO's 100-seat National Council.²⁷ Hence, the PLO now became an organization that was heavily influenced by militants bent of the use of illegal violence. In turn, the PLO needed a charismatic leader who viewed terror tactics as a valid tool to improve the Palestinians' negotiating position, but also had the political skills to deal effectively with the international community and its mantra of nonviolence and peace.²⁸ Arafat was just that – a shrewd leader who at his very core readily embraced the use of terrorism and guerilla tactics but also understood the need to portray the PLO as acting in accordance with United Nations principles of peace and nonviolence.²⁹ Chairman Arafat was now part of the means to bring about the so-called liberation of Palestine. In 1969, Yasser Arafat was elected as the Chairman of the PLO.³⁰

Despite the merger which placed Fatah under the umbrella of the PLO, Fatah continued to use violent attacks against innocent civilians, even though Fatah purported formally to renounce “armed struggle” in accordance with the 1993 Oslo Accords.³¹ In fact, three terrorist organizations developed from the roots of Fatah: (1) Al-Aqsa Martyrs Brigades; (2) Force 17; and (3) Tanzim militia.³²

²⁷ *See id.*

²⁸ *See id.*

²⁹ *See* U.N. CHARTER art. 1; U.N. CHARTER art. 2, para. 3; U.N. CHARTER art. 2, para. 4. The maintenance of international peace and security is, in fact, the very purpose of the United Nations. No nation may resort to the “threat or [the] use of force against the territorial integrity or political independence of any State” to settle any form of dispute. This, and the clear prohibition in Article 1 against any nation committing “acts of aggression or other breaches of the peace,” creates a legal framework dedicated to curtailing unlawful aggression.

³⁰ *See* Katzman, *supra* note 25. Foreign Terrorist Organizations (FTOs) are designated by the Secretary of State in accordance with section 219 of the Immigration and Nationality Act (INA). The organization must engage in terrorist activity, as defined in section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)), or terrorism, as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. § 2656f(d)(2)), or retain the capability and intent to engage in terrorist activity or terrorism.

³¹ AARON PINA, CONG. RESEARCH SERV., RS22395, FATAH AND HAMAS: THE NEW PALESTINIAN FACTIONAL REALITY (2006).

³² *Id.* at 4.

The Al-Aqsa Martyrs Brigades was designated by the U.S. State Department as a foreign terrorist organization (FTO) in 2002.³³ The Al-Aqsa Martyrs Brigade, which emerged in 2000 at the time of the Second Intifada, operated with horrific violence against civilians during the Second Intifada.³⁴ Their goal was to use violence against civilians to force Israel to bend to Palestinian demands in “peace” talks.³⁵

Force 17 was commonly known as the PLO leadership’s personal security force.³⁶ Not only was Force 17 involved in attacks on Israeli targets, but Force 17 was also responsible for attacks against anti-PLO Palestinians.³⁷ Although the peak of terrorist activity from Force 17 was in the early 1980’s, alumni of Force 17’s active years have gone on to commit other acts of terrorism. Such is the case of the late Imad Fa’iz Mughniyah.³⁸ At the top of the FBI’s most wanted list prior to September 11, 2001, Mughniyah was responsible for the killing of Americans as well as Israelis in the 1980’s and early 1990’s.³⁹ Mughniyah’s shining achievement was his high rank in Hezbollah, a designated FTO that has a long list of terror attacks against Israelis and Americans.⁴⁰

The Tanzim militia is also an armed offshoot of Fatah, established in 1995 by Arafat and the Fatah leadership as a paramilitary force. The Tanzim militia was intended to offset the power of other Palestinian Islamist groups, particularly Hamas and Palestine Islamic Jihad.⁴¹ The Tanzim militia functions as a grass roots organization that operates at the community level, and, by taking a hard-line position toward Israel, it has helped siphon Palestinian support from the Islamist groups.⁴² Tanzim has been

³³ *Id.* See also *List of Foreign Terrorist Organizations*, U.S. DEP’T OF STATE (Sept. 28, 2012), <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

³⁴ AARON PINA, CONG. RESEARCH SERV., RS22395, FATAH AND HAMAS: THE NEW PALESTINIAN FACTIONAL REALITY (2006).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *A Deadly Trail of Attacks*, WASH. POST, (Feb. 14, 2008), <http://www.washingtonpost.com/wpdyn/content/article/2008/02/13/AR2008021303246.html>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ KENNETH KATZMAN, CONG. RESEARCH SERV., RS21235, THE PLO AND ITS FACTIONS 5 (2002)

⁴² *Id.*

directly linked to several mortar attacks on Israeli civilian settlements.⁴³

II. TOTALITARIAN LEADERSHIP OF YASSER ARAFAT

*"The [Palestinian National Assembly - PNA] council had not been elected, so this amounted to a granting of absolute power to the PLO pending the holding of elections. Not only did the chairman of the PLO become the president of the PNA, he was also its prime minister, the commander of the armed forces and president of the legislative council, and had the power to appoint, promote and fire members of the judiciary. The executive, legislative, and judicial powers of the PNA were thus vested in the person of Yasser Arafat or subordinated to PLO bodies over which he presided. It amounted to installing a one-man, one-party system."*⁴⁴

-Said Aburish, Arafat's Biographer

In Oslo, Norway, the location of the 1993 Oslo Accords, the Israelis conceded a matter of paramount importance to Yasser Arafat. Israel recognized the Palestinian National Authority (PNA) as the sole legitimate representative of the Palestinian people, with Arafat as its head.⁴⁵ This was the culmination of many years of effort on the part of Yasser Arafat, who was for all practical purposes a dictator with dictatorial powers over the Palestinian people. Indeed, he was a mastermind of manipulation, equally able to play to the stage of the international community or the "Arab streets." But one example of this was the "walk-out" episode staged by Arafat at the initial 1994 Cairo Agreement, which was designed to buttress the Oslo Accords.⁴⁶ After agreeing with the Israeli prime minister on the specific terms, Arafat created a scene by walking-out in the full presence of the international media that had gathered in great force to witness the official signing ceremony.⁴⁷ By doing so, Arafat resolved two issues in his

⁴³ *Id.*

⁴⁴ SAID K. ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR 276 (1998).

⁴⁵ *Yasser Arafat: Architect of Terror*, MIDDLE EAST NEWS WIRE, (Jan. 28, 2013), <http://www.mideastnewswire.com/yasser-arafat-architect-of-terror>

⁴⁶ Amos Perlmutter, *A Chosen Course*, WASH. TIMES (Oct. 30, 2000), <http://www.washingtontimes.com/news/2000/oct/30/20001030-012207-1002r/>.

⁴⁷ *Id.*

favor. First, by entering the talks—and ultimately signing an agreement—he had strengthened the narrative to the Israelis, Egyptians, and Americans of working for a negotiated peace. This took international pressure off of him while providing continued financial support and respect from the world. Second, his ceremonial walk-out was also for consumption by the Palestinian people, demonstrating that he was unwilling to bend to the Israelis.⁴⁸

Like all totalitarian regime elites,⁴⁹ Arafat was primarily concerned with achieving and maintaining power. By engaging in duplicitous conduct, Arafat was able to juggle competing and antithetical objectives in a constant effort to maintain power and force concessions from Israel. Arafat's so-called "democratic" elections were simply a veil for the cronyism and wide-spread corruption of the PA.⁵⁰ The extreme lack of consistency in the Palestinian electoral process was known as "Arafatism" because of the autocracy that Arafat's Fatah dominated government had established.⁵¹

Accordingly, when it came to fending off accusations that he failed to combat Palestinian terrorism, Arafat maintained a

⁴⁸ *Id.*

⁴⁹ See JOHN NORTON MOORE & ROBERT F. TURNER, NATIONAL SECURITY LAW 77 (2d ed. 2005).

Director of the Center for National Security Law, Professor John Norton Moore, argues that totalitarian regimes are considerably more likely to resort to aggressive violence than democracies. Professor Moore terms this phenomenon the "radical regime" syndrome:

A radical totalitarian regime ... seems to blend together a mixture of a failing centrally planned economy, severe limitations on economic freedom, a one-party political system, an absence of an independent judiciary, a police state with minimal human rights and political freedoms at home, a denial of the right to emigrate, heavy involvement of the military in political leadership, a large percentage of the GNP devoted to the military sector, a high percentage of the population in the military, leaders strongly motivated by an ideology of true beliefs including willingness to use force, aggressively anti-Western and antidemocratic in behavior, and selective support for wars of national liberation, terrorism, and disinformation against Western or democratic interests.

⁵⁰ See AARON D. PINA, CONG. RESEARCH SERV., RL33269, PALESTINIAN ELECTIONS 57 (2006).

⁵¹ *Id.*

straight face that he was doing everything in his power to fight it.⁵² His efforts to portray his sense of helplessness even included circular arguments claiming that Israeli attacks on those responsible for acts of terrorism from his own police apparatus destroyed the very forces he could have used to crack down on terrorism!⁵³

American administrative reports during Arafat's tenure, produced to evaluate the PLO's compliance with its commitments, consistently found that factions associated with the PLO encouraged or participated in illegal violence against civilians in Israel.⁵⁴ Despite the repeated claims by apologists for Arafat stating that he had no control or influence over terror groups like the Al-Aqsa Martyrs Brigade, an organization that proudly claimed responsibility for suicide bombings against Israeli citizens in the Second Intifada, it is clear that Arafat and his regime bear direct responsibility. For instance, in 2002, an Al-Aqsa Martyrs Brigade commander admitted that Arafat controlled the brigade and they were part of Fatah.⁵⁵ A *USA Today* newspaper interview with commander Maslama Thabet reported:

A leader of the largest Palestinian terrorist group spearheading suicide bombings and other attacks against Israel says he is following the orders of Palestinian leader Yasser Arafat. "Our group is an integral part of Fatah," says Maslama Thabet.⁵⁶

Again, along with six other Palestinian terror groups, the Al-Aqsa Martyrs Brigade was and remains on the list of designated FTOs, by the U.S. State Department.⁵⁷

⁵² *Terrorism Havens: Palestinian Authority*, COUNCIL ON FOREIGN RELATIONS (Dec. 2005), <http://i.cfr.org/palestine/terrorism-havens-palestinian-authority/p9515>.

⁵³ *Id.*

⁵⁴ KENNETH KATZMAN, CONG. RESEARCH SERV., RL31119, TERRORISM: NEAR EASTERN GROUPS AND STATE SPONSORS 23 (2002).

⁵⁵ Matthew Kalman, *Terrorist Says Orders Come from Arafat*, USA TODAY (Mar. 14, 2002), <http://usatoday30.usatoday.com/news/world/2002/03/14/usat-brigades.htm>.

⁵⁶ *Id.*

⁵⁷ *Country Reports on Terrorism 2012*, U.S. DEP'T OF STATE (May 30, 2013), <http://www.state.gov/j/ct/rls/crt/2012/209989.htm>.

III. THE SECOND INTIFADA

*“Struggle, struggle, struggle, struggle. Combat, combat, combat, combat. Jihad, jihad, jihad, jihad.”*⁵⁸
-Yasser Arafat

In terms of promoting democracy and peaceful coexistence in the Middle East, the United States has always viewed the development of a just and peaceful settlement between Israel and Palestine as of utmost importance.⁵⁹ Unfortunately, this goal has yet to be achieved.⁶⁰ While there exists no one answer to the failure of the “peace process” between Israel and Palestine, it is certain that the direct cause for many of the lost opportunities for peace and stability must be placed directly at the feet of the former leader of the Palestinian people – Yasser Arafat.

In September 2000, after over seven years of on again off again “peace-talks” with Israel,⁶¹ Yasser Arafat intentionally chose to turn his back on the Oslo Process and the American brokered negotiations at Camp David – diplomatic initiatives that were designed to help the Palestinians and Israelis achieve a lasting peace in measured phases. Amazingly, at the Camp David peace process brought together by President Bill Clinton, Israel had

⁵⁸ *Yasser Arafat Calls for Jihad, Struggle, and Combat*, PALESTINIAN MEDIA WATCH (Oct. 21, 1996), palwatch.org/main.aspx?fi=711&fld_id=5253 (providing a media clip from official Palestinian TV).

⁵⁹ EFRAIM KARSH, ARAFAT’S WAR 39 (2003).

⁶⁰ See generally R. B. THIEME, JR., ANTI-SEMITISM (1979).

⁶¹ S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967). United Nations Security Council Resolution 242, adopted on November 22, 1967, is the central document for establishing a “just and lasting peace.” Resolution 242 was adopted five months after the Six-Day War in 1967 where Israel defended itself against the armies of Jordan, Syria, and Egypt and defeated all three. Israel gained nearly 68,176 square kilometers of territory, but has since given back over 90% of those lands. Resolution 242 allows Israel to administer the territories it occupied in 1967 until a “just and lasting peace” is established. It also recognizes Israel’s need for “secure and recognized borders.” It is important to note that Resolution 242 only calls for Israel to withdraw from territories consistent with its need for “secure and recognized borders.” The Resolution does not call on Israel to withdraw from all the territories. Indeed, considering that Israel has always acted in defense when attacked with aggressive violence in 1948, 1967, and 1972, the nation of Israel has a far superior title to these lands than Jordan and Egypt. The Palestinians have never had a nation.

agreed to “give up between 94 percent and 96 percent of the disputed land on the West Bank and all of the Gaza Strip and to accept a Palestinian state.”⁶² Despite these unprecedented concessions by Israel, President Arafat rejected the offer and elected to instead launch a low level campaign of terror against the Israelis. Known as the *al-Aqsa Intifada*, or the Second Intifada, this reign of terror lasted for over four years and cost thousands of lives.

Some claim that the beginning of the Second Intifada was sparked by the unwelcomed visit of Israeli politician and former decorated Israeli Defense Forces (IDF) general (and future prime minister) Ariel Sharon, with a full security entourage, to the Temple Mount in Jerusalem – the site of the Jewish Temple destroyed by three Roman legions in 70 AD⁶³ and the site of two Islamic mosques. This visit occurred on September 20, 2000, and had been fully negotiated in advance with Palestinian leaders.⁶⁴ The Palestinians, however, quickly insisted that that Sharon’s visit pushed the Palestinians to take up arms. This explanation for the uprising has been repeatedly challenged by many, to include Palestinians such as Imad Faluji, a former member of the PA and Minister of Communications⁶⁵ and Suha Arafat, Yasser Arafat’s widow.⁶⁶ Nevertheless, even if one accepts the view that the Second Intifada “spark” was not orchestrated by Arafat, it is clear that Arafat utilized the Sharon incident as an excuse to begin his planned Second Intifada following his walk out of the Camp David accords.⁶⁷

⁶² See ALAN DERSHOWITZ, *THE CASE FOR ISRAEL* 205 (2003).

⁶³ See STEPHEN DANDO-COLLINS, *LEGIONS OF ROME* 351-354 (2010) (describing how Roman general Titus, the son of Vespasian, used the 5th Macedonica, 12th Fulminata, and 15th Apollinaris legions to surround and destroy Jerusalem killing close to one million Jews and enslaving the 97,000 survivors of the siege).

⁶⁴ See ALAN DERSHOWITZ, *THE CASE FOR ISRAEL* 112 (2003) (citing the Mitchell Commission Report that found that the visit of Sharon did not start the Second Intifada – it was already planned by the PA and Yasser Arafat).

⁶⁵ *PA Minister of Communications: Intifada Already Planned When Arafat Returned from Camp David*, PALESTINIAN MEDIA WATCH (Dec. 5, 2000), <http://www.youtube.com/watch?v=T-SY8JxyUQA>.

⁶⁶ *Suha Arafat Admits Husband Premeditated Intifada*, JERUSALEM POST (Dec. 29, 2012), <http://www.jpost.com/MiddleEast/Article.aspx?id=297688>

⁶⁷ Khaled Abu Toameh, *See How the War Began*, JERUSALEM POST (Sept. 20, 2002), <http://www.mafhoum.com/press3/111P55.htm> (quoting communications minister of the PA, Khaled Abu Toameh, “The PA had begun to prepare for

The motive for Arafat's launching of the Second Intifada was certainly tied in part to his view that negotiating with Israel was not winning him Palestinian support. Despite the fact that Arafat had imposed the PLO's authority over the West Bank and Gaza with his 30,000-man security force, he almost certainly realized that a rival Palestinian Islamist group called Hamas⁶⁸ had been growing steadily in popularity since its emergence in 1987 as an outgrowth of the Egyptian-based Muslim Brotherhood. Due to its image as a "resistance" group, reinforced by tough talk and actual terror attacks against Israel, Hamas electrified many Palestinians. This, of course, came at the expense of Arafat's claim to be the sole representative of the Palestinian people. To regain prestige and power, Arafat turned to terrorism and rejected compromise. In fact, Arafat increasingly engaged in the use of extremist Islamist rhetoric similar to that of Hamas, making Jerusalem a focal point for the incitement of the violence. For example, inspired by Arafat's Islamist rhetoric at an Arafat rally in December 2001, the crowd screamed: "We are marching, millions of martyrs to Jerusalem."⁶⁹

It was at this time that the al-Aqsa Martyrs Brigades, a direct offshoot of Arafat's Fatah party, co-opted Islamic symbols and slogans. The al-Aqsa Martyrs Brigades served to bolster Arafat's credentials in this regard. In little time, al-Aqsa Martyrs Brigades rivaled Hamas in its headline-grabbing attacks against civilian targets by engaging in roadside shootings and suicide attacks against civilians. By 2002, they had openly claimed responsibility for dozens of attacks in which Israeli and foreign civilians were murdered in terror attacks.⁷⁰ Realizing the al-Aqsa Martyrs Brigades had "killed a number of US citizens, the majority of them dual US-Israeli citizens, in its attacks,"⁷¹ in 2002 the U.S.

the outbreak of the current Intifada since the return from the Camp David negotiations, by request of President Yasser Arafat").

⁶⁸ MATTHEW LEVITT, HAMAS (2006) (describing the origin and policy of Hamas as a Palestinian terrorist movement).

⁶⁹ MATTHEW LEVITT, TARGETING TERROR: U.S. POLICY TOWARD MIDDLE EASTERN STATE SPONSORS AND TERRORIST ORGANIZATIONS, POST-SEPTEMBER 11, 86 (2002) <http://www.washingtoninstitute.org/uploads/Documents/pubs/TargetingTerror.pdf.pdf>.

⁷⁰ MATTHEW LEVITT, HAMAS 14 (2006) (setting out the origin of al-Aqsa Martyrs Brigades).

⁷¹ *Country Reports on Terrorism*, U.S. DEP'T OF STATE (Apr. 27, 2005), <http://www.state.gov/documents/organization/65462.pdf>.

State Department designated the al-Aqsa Martyrs Brigades as a foreign terrorist organization (FTO). In their report, the State Department affirmed that the al-Aqsa Martyrs Brigades “has committed, or poses a serious risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.”⁷² A typical al-Aqsa Martyrs Brigades terror attack occurred on March 21, 2002, when an al-Aqsa Martyrs Brigades suicide bomber detonated himself in the middle of a crowded street in Jerusalem, killing three and injuring 86.⁷³ Less than three weeks earlier, another al-Aqsa Martyrs Brigades suicide bomber had murdered ten and injured 50 at a bar mitzvah celebration.⁷⁴ In some instances, members of the al-Aqsa Martyrs Brigades would openly admit their direct allegiance to Yasser Arafat. For example, one commander in Tulkarem acknowledged to a *USA Today* reporter in 2002, “We receive our instructions from Fatah. Our commander is Yasser Arafat himself.”⁷⁵

During an Israeli military incursion into the West Bank in 2002, a treasure trove of documents was seized from PA offices. The documents provided detailed proof that Fatah, the dominant faction of the Palestinian Authority, bankrolled nearly every aspect of the terrorist operations of the al-Aqsa Martyrs Brigades – from explosives to guns to gas money.⁷⁶ “The captured documents proved unequivocally that the Fatah organization and the al-Aqsa Martyrs Brigades are one and the same and they cannot be separated,” an Israeli report stated.⁷⁷

Following a review of the seized documents, Israeli authorities concluded that “Yasser Arafat was personally involved

⁷² *Designation under Executive Orders 13224 and 12947*, 67 F.R. 14761 (Mar. 27, 2002), <http://www.gpo.gov/fdsys/pkg/FR-2002-03-27/html/02-7492.htm>.

⁷³ *Suicide Bombing in the Beit Yisrael Neighborhood in Jerusalem*, ISRAELI MINISTRY OF FOREIGN AFFAIRS, (Mar. 2, 2002), <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Suicide%20bombing%20in%20the%20Beit%20Yisrael%20neighborhood%20i.aspx>.

⁷⁴ *Id.*

⁷⁵ Matthew Kalman, *Terrorist Says Orders Come from Arafat*, USA TODAY (Mar. 14, 2002), www.usatoday.com/news/world/2002/03/14/usat-brigades.htm.

⁷⁶ *The Involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism Against Israel: Corruption and Crime*, ISRAELI MINISTRY OF FOREIGN AFFAIRS (May 6, 2002), <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/The%20Involvement%20of%20Arafat%20PA%20Senior%20Officials%20and.aspx>.

⁷⁷ *Id.*

in the planning and execution of terror attacks. He encouraged them ideologically, authorized them financially and personally headed the Fatah Al Aqsa Brigades organization.”⁷⁸ Israeli authorities further charged that Arafat had “gave terrorism ‘free reign’ (by releasing senior terrorists from prison and refrained from carrying out minimal counter-terrorist activity) and even encouraged terrorism....”⁷⁹

Even if one gives some consideration to the false claim that President Yasser Arafat should not be held responsible for the terror attacks during the Second Intifada because they were beyond his control, the sheer duration of time that passed during the violence (2000 to 2004) is dispositive. The continuous murders were not the case of some spontaneous limited acts of terrorism over a short period of time by some crazed individuals. The continuous acts of massive murders against innocent civilians by means of terror attacks lasted for years, with Arafat’s full knowledge. When asked about Arafat’s knowledge and involvement of the attacks committed by the Al-Aqsa Martyrs’ Brigade, Hussein A-Sheikh, a Fatah leader, acted as if he were insulted. A-Sheikh scoffed at the newspaper reporter posing the question: “Of course, there is control. What do you think? That we are just a bunch of gangs?”⁸⁰

Indeed, in order to believe that Arafat had no control over the groups that conducted the terror attacks, one must also believe that Arafat acquiesced to insubordination in his organization and relinquished to other groups a large portion of the power system he worked so hard to craft for himself. Arafat was not a figurehead leader; he was a brutal, totalitarian leader.⁸¹ Again, Arafat was the President of the PNA, the Chairman of the PLO, and the senior leader of the political party Fatah. In terms of the 1993 Oslo Accords, for which Arafat received the Nobel Peace Prize in 1994, Arafat made it clear that under his regime: “[T]he PLO renounces

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Matthew Kalman, *Terrorist Says Orders Come from Arafat*, USA TODAY (Mar. 14, 2002), www.usatoday.com/news/world/2002/03/14/usat-brigades.htm.

⁸¹ *Arafat to Children: Death as a Child-Martyr is the Greatest Message to the World*, OFFICIAL PALESTINIAN AUTHORITY TV (Aug. 4, 2003), <http://www.youtube.com/watch?v=tuveNFq7WS0>; See also, *Palestinian MP Dahlan: Arafat Deceived the World When Condemning Terror*, OFFICIAL PALESTINIAN AUTHORITY TV (July 22, 2009), <http://www.youtube.com/watch?v=lr3-Vileiw>.

the use of terrorism and other acts of violence and *will assume responsibility* over all PLO elements and personnel in order to assure their compliance, prevent violations, and discipline violators [emphasis added].”⁸²

IV. RESPONSIBILITY FOR TERROR ATTACKS

*“I am going to start the [Second] Intifada. They want me to betray the Palestinian cause. They want me to give up on our principles, and I will not do so.”*⁸³
-Yasser Arafat

There can be no question but that President Yasser Arafat was a master of duplicity and political expediency. In this regard, Arafat reflects the dilemma of proving that a particular regime and the regime leadership are legally responsible for the acts of terror.⁸⁴ Again, the plaintiff must demonstrate by direct and circumstantial evidence that the regime is legally liable for the acts of terror. In the case of the PA and Arafat during the Second Intifada, this matter of proof is aggravated by the fact that sometimes the PA would actually cooperate with Israel to stop certain Palestinian terror attacks, particularly if the alleged terrorist was not loyal to Arafat and “if such action coincided with the PA’s interest at that time.”⁸⁵ In every case, however, the PA would always seek to identify the Palestinian human source(s) that Israel relied on to obtain the information about the act of terror (or planned act of terror) and to then murder them.⁸⁶

There is direct and circumstantial evidence that Arafat not only orchestrated terror attacks, but that he also utilized the local media which operated under his control. By controlling the media, Arafat allowed others to incite violence and intimidation against Israel and in some cases, even the United States. Soon after the launch of the Second Intifada, PA-run television was broadcasting

⁸² EFRAIM KARSH, ARAFAT’S WAR 109 (2003).

⁸³ *Suha Arafat Admits Husband Premeditated Intifada*, JERUSALEM POST, (Dec. 29, 2012), <http://www.jpost.com/MiddleEast/Article.aspx?id=297688>.

⁸⁴ BOAZ GANOR, THE COUNTER-TERRORISM PUZZLE 55 (2005).

⁸⁵ *Id.*

⁸⁶ *Id.*

sermons calling for the murder of Jews and Americans.⁸⁷ Since the Arafat regime controlled the content of the media, the regime is responsible for that content.⁸⁸

In 2001, Sheikh Ikrima Sabri, the Mufti of Jerusalem who was on the Palestinian Authority payroll, verbally praised the use of suicide attacks against civilians,⁸⁹ promoting “jihad and martyrdom.” In June 2001, one sermon broadcasted by the PA station stated, “[b]lessings to whoever waged Jihad for the sake of Allah; blessings to whoever raided for the sake of Allah; blessings to whoever put a belt of explosives on his body or on his sons’ and plunged into the midst of the Jews.”⁹⁰ Another sermon on the PA station asserted, “[w]e must educate our children on the love of Jihad for the sake of Allah and the love of fighting for the sake of Allah.”⁹¹ PA TV also broadcasted a sermon said that there would be “blessings for whoever has saved a bullet in order to stick it in a Jew’s head....”⁹²

As previously stated, in 1988 the PLO formally renounced the use of terrorism, and it reaffirmed that commitment as part of the September 1993 Oslo Accords associated with the mutual recognition agreement with Israel.⁹³ Nevertheless, there can be no question that Palestinian terrorism under Arafat continued. A 2012 United States Congressional Research Service Report claims that “since Oslo in 1993, these groups [Palestinian terror organizations] have engaged in a variety of methods of violence, killing approximately 1,350 Israelis (over 900 civilians – including Jewish settlers in the Palestinian territories – and 450 security force

⁸⁷ *PA TV Broadcasts Call for Killing Jews and Americans*, MEMRI (Oct. 13, 2000), <http://www.memri.org/report/en/0/0/0/0/0/378.htm>.

⁸⁸ See *infra* note and accompanying text.

⁸⁹ *The Highest Ranking Palestinian Authority Cleric; In Praise of Martyrdom Operations*, MEMRI (June 11, 2001), <http://www.memri.org/report/en/0/0/0/0/0/466.htm>.

⁹⁰ *Friday Sermon on PA TV: Calling for Suicide Bombings*, MEMRI (June 13, 2001), <http://www.memri.org/report/en/0/0/0/0/0/467.htm>.

⁹¹ *A Friday Sermon on PA TV: ... We Must Educate our Children on the Love of Jihad*, MEMRI (July 13, 2001), <http://www.memri.org/report/en/0/0/0/0/0/478.htm>.

⁹² *Friday Sermon on PA TV: Blessings to Whoever Saved a Bullet to Stick It In a Jew’s Head*, MEMRI (Aug. 8, 2001), <http://www.memri.org/report/en/0/0/0/0/0/492.htm>.

⁹³ See KENNETH KATZMAN, CONG. RESEARCH SERV., RL31119, TERRORISM: NEAR EASTERN GROUPS AND STATE SPONSORS 22 (2002).

personnel).”⁹⁴ The report goes on to say that “although damage is difficult to measure qualitatively, suicide bombings have constituted a fearsome means of attack claiming approximately 700 Israeli lives (mostly civilians within Israel proper).”⁹⁵ Most of these attacks and fatalities occurred during or just before the Second Intifada spanning the years of 2000-2005.⁹⁶

An overview of the so-called “peace” process with Arafat reveals a pattern of duplicity on the part of Arafat:

- The Oslo Accords (1993) - Arafat agrees to cooperate with Israel to combat terrorism.
- Gaza Jericho Agreement (1994) - Arafat again agrees that Palestinians would act to prevent terror against Israelis in the areas under their control. In exchange, 5,000 Palestinian prisoners were released.
- Oslo II (1995) - Arafat agrees to continue on with the Oslo Accords and his promise to combat terrorism. In exchange, Israeli forces withdraw from the six largest cities in the West Bank.
- Hebron Accord (1997) - Terrorism continues but Israel still transfers control of the West Bank City of Hebron.
- Wye River Memorandum (1998) - In the face of increased violence and terrorism, attempts are made to make good on the promises made in Oslo. Again, Arafat agrees to combat terrorism, arrest those responsible, and collect weapons and explosives. In exchange, Israel agrees to pull back from an additional 13% of the West Bank and allow an airport to be built in Gaza.
- The Camp David Summit (2000) - Yet another failed attempt to initiate peace by the Clinton White House. Arafat refuses to sign.
- The Taba Talks (2001) - Both parties claim significant progress towards an agreement but no agreement is

⁹⁴ JIM ZANOTTI, CONG. RESEARCH SERV., RS34074, THE PALESTINIANS: BACKGROUND AND U.S. RELATIONS 11 (2012).

⁹⁵ *Id.* at 12.

⁹⁶ *Id.*

met. The Palestinian Second Intifada cycle of violence escalates.⁹⁷

The above outline reveals that there are two constants in the list of peace talks – protracted terrorism violence and a lack of peace. While there are clearly two parties involved and violence has been committed on both sides, the issue concerns the intentional and not the collateral use of violence directly aimed at murdering innocent civilians.⁹⁸ President Arafat and the PA have no justification in the use of terror tactics. Murdering innocent civilians is not part of negotiations toward peace.⁹⁹

⁹⁷ *Shattered Dreams of Peace: The Road from Oslo – The Negotiations*, PBS FRONTLINE (Jun. 27, 2002), <http://www.pbs.org/wgbh/pages/frontline/shows/oslo/etc/synopsis.html>

⁹⁸ See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272 (2001).

International terrorism involves violent acts or acts dangerous to human life that violate the criminal laws of the United States or any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state. These acts appear intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping. International terrorist acts occur outside the United States or transcend national boundaries in terms of how terrorists accomplish them, the persons they appear intended to coerce or intimidate, or the place in which the perpetrators operate.

⁹⁹ See, e.g., 28 C.F.R. §0.85 (2010) (asserting that there are numerous Federal statutes that offer slightly different definitions of terrorism). The Department of Justice defines terrorism as “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.” 28 C.F.R. §0.85(l) (2010)

(1) the term “international terrorism” means activities that—

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion;
or

Palestinian terrorist attacks, which were often directed by Yasser Arafat and the PA leadership, continued to take place even after the first reports of American casualties at the start of the Second Intifada. Indeed, at no point did the violence against civilian targets let up from 2000 to 2004. Instead, the terror attacks against civilians increased in frequency and number. This indicates that the PA, as it continued to direct the violence, was not willing to cease its paramilitary campaign despite the mounting American casualties.

It is common knowledge that tens of thousands of Israeli citizens are dual nationals who hold US citizenship.¹⁰⁰ These American-Israelis are indistinguishable from the broader Israeli public. Moreover, Israel (and particularly Jerusalem) is an important international tourist destination with hundreds of thousands of visitors and tourists arriving each year to tour the biblical sites. Additionally, many thousands of foreign students, including American citizens, study abroad in Israel during the school year and summer recesses. Thus, at any given time, there are thousands of foreigners, including many Americans, traveling in Israel. As such, the Palestinian terrorist groups surely knew that by perpetrating terrorist attacks in public streets, on passenger buses, in cafes and on highways, there was a high probability that American citizens could be murdered or injured.

The notion that the Palestinian terror groups or that the Palestinian leadership who controlled the terror groups were unaware that American citizens were being murdered and wounded is impossible. In each terrorist attack, the international media publicized the death and injury of the American or Americans in question. In addition, the American government made it clear from the beginning of the Second Intifada that Americans were in danger. The State Department issued multiple travel warnings,

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

¹⁰⁰ Michele Chabin, *American Citizens Living In Israel, Abroad Cast Votes*, USA TODAY (Oct. 31, 2012), www.usatoday.com/story/news/world/2012/10/31/israel-ex-pats/1669543/.

including those on December 7, 2001,¹⁰¹ August 2, 2002,¹⁰² January 10, 2003,¹⁰³ March 24, 2004,¹⁰⁴ August 3, 2004,¹⁰⁵ and November 26, 2004.¹⁰⁶ In other words, the U.S. State Department made it clear every few months that the dangers to American citizens remained high, as a result of the continued Palestinian violence. These warnings were obviously issued to Americans, but they were conveyed via State Department channels each time to the PA.

Congress also made clear its concern about the role the PA played in the terrorist violence, and consistently called upon the PA to halt the Second Intifada immediately. Their concern was primarily focused on ending the violence, without specific regard for potential American casualties. *On October 19, 2000, House Resolution 5500 called for the establishment of a body within the Justice Department to “monitor acts of international terrorism alleged to have been committed by Palestinian individuals or individuals acting on behalf of Palestinian organizations.”*¹⁰⁷

In fact, there are numerous findings by the United States Congress in concurrent resolutions and bills that directly link President Yasser Arafat and the Palestinian Authority to terrorism and the murder of civilians. Gathering all the pertinent facts, the United States Congress specifically found that Yasser Arafat and “the forces directly under his control were responsible for the [intentional] murder of hundreds of innocent [civilians] and the wounding of thousands more.”¹⁰⁸ Furthermore, Arafat was directly implicated in funding and supporting terrorists who had claimed responsibility for homicide bombings in Israel.¹⁰⁹

¹⁰¹ *Israel, the West Bank and Gaza - Travel Warning*, U.S. DEP’T OF STATE (Dec. 7, 2001).

¹⁰² *Israel, the West Bank and Gaza - Travel Warning*, U.S. DEP’T OF STATE (Aug. 2, 2002).

¹⁰³ *Israel, the West Bank and Gaza - Travel Warning*, U.S. DEP’T OF STATE (Jan. 10, 2003).

¹⁰⁴ *Travel Warning - Israel, the West Bank and Gaza*, U.S. DEP’T OF STATE (Mar. 24, 2004).

¹⁰⁵ *Israel West Bank and Gaza Travel Warning*, U.S. DEP’T OF STATE (Aug. 3, 2004).

¹⁰⁶ *Israel, the West Bank, and Gaza*, U.S. DEP’T OF STATE (Nov. 26, 2004).

¹⁰⁷ H.R. 5500, 106th Cong. (2000).

¹⁰⁸ H.R. 4693, 107th Cong. (2002).

¹⁰⁹ H.R. 4693, 107th Cong. at 3 (2002).

A list of pertinent Congressional Resolutions and Bills illustrates the point:

(1) House Concurrent Resolution 426 of the 106 Congress (October 25, 2000), Concerning the Violence in the Middle East,¹¹⁰ (passed by a vote of 365-30)¹¹¹ made specific findings and conclusions:

- The fact that Chairman Yasser Arafat pledged in writing that: “[T]he PLO renounces the use of terrorism and other acts of violence, and will assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations and discipline violators.”¹¹²
- The fact that over “95 percent of the Palestinian population [is] under the civil administration of the Palestinian Authority.”¹¹³
- The fact that “the Palestinian Authority with the assistance of Israel and the international community, created a strong police force, almost twice the number allowed under the Oslo Accords, specifically to maintain public order.”¹¹⁴
- The fact that “the Palestinian leadership not only did too little for too long to control the violence, but in fact encouraged it.”¹¹⁵
- “*Resolved* by the House of Representatives (the Senate concurring), That the Congress – (1) expresses, its solidarity with the state and the people of Israel at this time of crisis; (2) condemns the Palestinian leadership for encouraging the violence and doing so little for so long to stop it, resulting in senseless loss of life; (3) calls upon the Palestinian leadership to refrain from any exhortations to the public incitement, urges Palestinian leadership to vigorously use its security forces to act

¹¹⁰ H.R. Con. Res. 426, 106th Cong. (2000).

¹¹¹ CLYDE MARK, CONG. RESEARCH SERV., IB92052, PALESTINIANS AND MIDDLE EAST PEACE: ISSUES FOR THE UNITED STATES 7 (2005).

¹¹² H.R. Con. Res. 426, 106th Cong. at 2 (2000).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

immediately to stop all violence, to show respect for all holy sites, and to settle all grievances through negotiations.”¹¹⁶

(2) Senate Bill 684 of the 108th Congress (March 21, 2003), Koby Mandell Act of 2003,¹¹⁷ made specific findings and conclusions:

- The fact that “[n]umerous American citizens have been murdered or maimed by terrorists around the world, including more than 100 murdered since 1968 in terrorist attacks occurring in Israel or in territories administered by Israel or in territories administered by the Palestinian Authority.”¹¹⁸
- The fact that “[t]his situation is especially grave in the areas administered by the Palestinian Authority, because many terrorists involved in the murders of Americans are walking free [from] there; some of these terrorists have been given positions in the Palestinian Authority security forces or other official Palestinian Authority agencies; and a number of schools, streets, and other public sites have been named in honor of terrorists who were involved in the murders of Americans.”¹¹⁹

(3) House Concurrent Resolution 202 of the 107th Congress (July 27, 2001), Condemning the Palestinian Authority and Various Palestinian Organizations for Using Children as Soldiers and Inciting Children to Acts of Violence and War,¹²⁰ made specific findings and conclusions:

- The fact that “the Palestinian Authority established and trained units, called the Fatah Youth cadres, of ‘Shabiba,’ to fight in the current ‘Intifada.’”¹²¹

¹¹⁶ *Id.*

¹¹⁷ S. 684, 108th Cong. (2003).

¹¹⁸ *Id.*

¹¹⁹ S. 684, 108th Cong. at 2 (2003),

¹²⁰ H.R. Con. Res. 202, 107th Cong. (2001).

¹²¹ *Id.*

- The fact that “the Palestinian national media have encouraged children to become martyrs.”¹²²
- The fact that “the Palestinian Authority has incited and continues to incite its children to acts of violence against Israel and promotes the martyrdom of children.”¹²³
- The fact that “Yasir Arafat has called Palestinian children, ‘generals of the Intifada’ and those ‘who throw the stones to defend Jerusalem, the Muslims, and the holy places.’”¹²⁴
- The fact that “Sheik Ikrima Sabri, the Mufti of Jerusalem appointed by Yasir Arafat, stated that, ‘the younger the martyr, the greater and the more I respect him.’”¹²⁵
- The fact that “during the summer of 2000, approximately 25,000 Palestinian children attended military-style summer camps run by Yasir Arafat’s Palestinian Liberation Organization Fatah Movement to indoctrinate them in anti-Israeli militancy.”¹²⁶
- The fact that “the American Academy of pediatrics states that ‘governments that encourage or permit children to participate in violence, to further political aims, are practicing a form of societal abuse.’”¹²⁷
- “*Resolved* by the House of Representatives (the Senate concurring), That Congress: (1) considers the Palestinian Authority in violation of the principles embodied in the United Nations convention on the Rights of the Child (1989) for its use of children as soldiers as soldiers and inciting children to acts of violence and war; (2) strongly urges Palestinian Council to immediately declare its commitment to the United Nations Convention on the rights of the Child and adopt legislation to implement the Convention as soon as possible; (3) while reaffirming the continued applicability of all existing prohibitions, restrictions,

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

limitations, and directives otherwise apply to the Palestinian Authority.”¹²⁸

(4) United States House of Representatives in Resolution 392 of the 107th Congress (May 2, 2002)¹²⁹ (passed by a vote of 352-21),¹³⁰ made specific findings and conclusions:

- The fact that “Yasir Arafat and the members of the Palestinian leadership have failed to abide by their commitments to non-violence made in the Israel-PLO Declaration of Principles (the ‘Oslo accord’) of September 1993, including their pledges: (1) to adhere strictly to a ‘peaceful resolution of the conflict,’ (2) to resolve ‘all outstanding issues relating to permanent status through negotiations,’ (3) to renounce ‘the use of terrorism and other acts of violence,’ and (4) to ‘assume responsibility over all PLO elements and personnel in order to assure their compliance [with the commitment to nonviolence], prevent violence, and discipline violators.’”
- The fact that “the continued terrorism and incitement committed, supported, and coordinated by official arms of the Palestinian Authority are a direct violation of these commitments.”¹³¹
- The fact that “the al-Aqsa Martyrs Brigades, which is part of Arafat’s Fatah organization and has been designated a “Foreign Terrorist Organization” by the United States Government - have murdered scores of innocent Israelis.”¹³²
- The fact that “Yasir Arafat was directly involved in the Palestinian Authority’s thwarted attempt to obtain 50

¹²⁸ H.R. Con. Res. 202, 107th Cong. at 3 (2001). “The Tulkarm Women’s Union has urged Yasir Arafat ‘to issue instructions to your police force to stop sending innocent children to their death’; and Carol Bellamy, the Executive director of the United Nations Children’s Fund, has called on the Palestinian Authority, ‘to take energetic measures to discourage those underage from participating in any violent action because such action places them at risk.’” *Id.*

¹²⁹ H. Res. 392, 107th Cong. (2002),.

¹³⁰ CLYDE MARK, CONG. RESEARCH SERV., IB92052, PALESTINIANS AND MIDDLE EAST PEACE: ISSUES FOR THE UNITED STATES 7 (2005).

¹³¹ H.R. Res. 392, 107th Cong. (2002).

¹³² *Id.*

tons of offensive weapons shipped from Iran in the Karines-A, an effort that irrefutable proved Arafat's embrace of the use and escalation of violence."¹³³

- The fact that the Israeli Government has documents found in the offices of the Palestinian Authority that "demonstrate the crucial financial support the Palestinian Authority continues to provide for terrorist acts, including suicide bombers."¹³⁴
- The fact that "Yasir Arafat continues to incite terror by, for example, saying of the Passover suicide bomber [April 2002], 'Oh God, give me a martyrdom like this.'"¹³⁵
- The fact that "Yasir Arafat and the PLO have a long history of making and breaking anti-terrorism pledges."¹³⁶
- "*Resolved*, That the House of Representatives – ... condemns the ongoing support and coordination of terror by Yasir Arafat and other members of the Palestinian leadership [and] demands that the Palestinian Authority at last fulfill its commitment to dismantle the terrorist infrastructure in the Palestinian areas, including any such infrastructure associated with PLO and Palestinian Authority entities tied directly with Yasir Arafat."¹³⁷

(5) House Bill 4693 of the 107th Congress (May 9, 2002), To Hold Accountable the Palestine Liberation Organization and the Palestinian Authority, and for Other Purposes, *aka*, 'Arafat Accountability Act',¹³⁸ made specific findings:

- The fact that "Yasser Arafat and the forces directly under his control are responsible for the murder of hundreds of innocent Israelis and the wounding of thousands more since October 2000."¹³⁹

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See H.R. Res. 4693, 107th Cong. (2002)

¹³⁹ *Id.*

- The fact that “Yasser Arafat has been directly implicated in funding and supporting terrorists who have claimed responsibility for homicide bombings in Israel.”¹⁴⁰

(6) House Concurrent Resolution 119 of the 108th Congress (March 26, 2003), Condemning Attacks on United States Citizens by Palestinian Terrorists, and Other Purposes,¹⁴¹ made specific findings:

- The fact that “since Yasser Arafat renounced violence in the Oslo Peace Accords on September 13, 1993, at least 38 United States citizens, including one unborn child, have been murdered by Palestinian terrorists.”¹⁴²

Of course, as in any issue involving legal responsibility, it is always critical to ascertain the actual “words” employed by the guilty party. Throughout the Oslo Accords, Arafat would often say one thing to the civilized world in English but quite another to the Palestinians in Arabic.¹⁴³ Most often he would tell the Palestinians that the Oslo Accords were only a “phased strategy” because of Islam’s absolute “right of return” to the Holy Land.¹⁴⁴ Even after the Oslo Accords, Arafat still advocated for a “liberated and Arab Palestine.”¹⁴⁵ His goal to “obliterate the Jewish state altogether”¹⁴⁶ never changed. While President Yasser Arafat was cognizant of the need to conceal his involvement in promoting and advocating terror, the following quotes from Arafat and those close to him illustrate his advocacy and ultimate responsibility for terror attacks against innocent civilians:

(1) In 1996 Arafat spoke at a rally near Bethlehem saying: “*We know only one word, Jihad. Jihad. Jihad. Jihad. Whoever does*

¹⁴⁰ *Id.*

¹⁴¹ See H.R. Con. Res. 119, 108th Cong. (2003)

¹⁴² *Id.*

¹⁴³ See AVNER FALK, FRATRICIDE IN THE HOLY LAND 75 (2004).

¹⁴⁴ See EFRAIM KARSH, ARAFAT’S WAR 5-6 (2004).

¹⁴⁵ See *id.* at 58–59.

¹⁴⁶ See AVNER FALK, FRATRICIDE IN THE HOLY LAND 75 (2004).

not like it can drink from the Dead Sea or from the Sea of Gaza."¹⁴⁷

- (2) Again in Bethlehem at a speech in 1996, Arafat said: *"Struggle, struggle, struggle, struggle. Combat, combat, combat, combat. Jihad, jihad, jihad, jihad."*¹⁴⁸
- (3) In 1997 Arafat spoke at a rally saying: *"O my dear ones on the occupied lands, relatives and friends throughout Palestine and the diaspora, my colleagues in struggle and in arms, my colleagues in struggle and in jihad Intensify the revolution and the blessed intifada We must burn the ground under the feet of our invaders."*¹⁴⁹
- (4) In a 1997 letter to the Conference of Businessmen for Jerusalem, Arafat wrote: *"The settlements [Israeli] are a declaration of total war against the Palestinian people, an open and destructive war against our people, our land, and our holy places. The Israeli settlements on our land, in our Jerusalem and in the rest of the West Bank are a war against the peace process."*¹⁵⁰
- (5) In 1996, Arafat publicly honored the Hamas terrorist Yahya Ayyash, known as the "the engineer" and organizer of many suicide bombings against civilians: *"Today, I ask of you, my brothers, to recite the Opening [Chapter in the Quran] for all our Martyrs, and the last among them, the Martyr, engineer Yahya Ayyash."*¹⁵¹

¹⁴⁷ *Yasser Arafat's Timeline of Terror*, COMMITTEE FOR ACCURACY IN MIDDLE EAST REPORTING IN AMERICA (Nov. 13, 2004), http://www.camera.org/index.asp?x_context=7&x_issue=11&x_article=795.

¹⁴⁸ See *Yasser Arafat Calls for Jihad, Struggle, and Combat*, PALESTINIAN MEDIA WATCH (Oct. 21, 1996), http://palwatch.org/main.aspx?fi=711&fld_id=723&doc_id=5253 (providing a media clip from Official Palestinian TV)

¹⁴⁹ See *Timeline of Terror*, *supra* note 147.

¹⁵⁰ *In the Words of Arafat*, N.Y. TIMES, Aug. 4, 1997, <http://www.nytimes.com/1997/08/04/world/in-the-words-of-arafat.html>.

¹⁵¹ See *Arafat Honors Ayyash, "The Engineer," Hamas' Organizer of Suicide Bombings*, PALESTINIAN MEDIA WATCH (Jan. 7, 1996), <http://www.youtube.com/watch?v=pZKxHMTaiMg> (offering a private recording).

- (6) Suha Arafat, the widow of Yasser Arafat, when interviewed on Dubai TV in 2012, in reference to Yasser's involvement in the Second Intifada: *"I met him in Paris upon his return ... Camp David had failed, and he said to me, 'You should remain in Paris.' I asked him why, and he said, 'Because I am going to start an intifada. They want me to betray the Palestinian cause. They want me to give up on our principles, and I will not do so.'"*¹⁵²
- (7) In 2010 Palestinian Authority TV interview with Muhammad Dahlan, a member of the Fatah Central Committee, Dahlan said: *"In the intifada, when Arafat wanted something, he asked his security services, 40% of which were either killed, Shahids (Martyrs) or prisoners..... Arafat brought about the intifada..... We [the PLO and PA security services] are the ones who started it."*¹⁵³
- (8) Muhammad Dahlan also stated in 2009: *"I lived with Chairman Yasser Arafat for years. Arafat would condemn [terror] operations by day while at night he would do honorable things."*¹⁵⁴
- (9) Mazen Izz Al-Din, the Deputy Director of the PA's Political and National Education Authority, when asked about the responsibility for the terror campaign, admitted: *"The Al-Aqsa Intifada – if we want to be truthful and open, history will reveal one day – that it [the Second Intifada] and all its directives belong to the President and Supreme Commander, Yasser Arafat."*¹⁵⁵
- (10) The PA Minister of Prisoners, Ashraf Al-Ajrami, stated: *"Even this intifada, whose flag Hamas has tried to wave unjustly, forcibly, falsely and fraudulently – that [intifada] flag*

¹⁵² Suha Arafat Admits Husband Premeditated Intifada, JERUSALEM POST, Dec. 29, 2012, <http://www.jpost.com/Middle-East/Suha-Arafat-admits-husband-premeditated-Intifada>

¹⁵³ Itamar Marcus and Nan Jacques Ziberdik, *Arafat Planned and Led the Intifada: Testimonies from PA Leaders and Others*, PALESTINIAN MEDIA WATCH (Nov. 28, 2011). http://palwatch.org/main.aspx?fi=157&doc_id=5875 (providing a PA TV (Fatah) transcript).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

belongs to Yasser Arafat alone ... These [Palestinian Authority security] forces paid the heavy price in the Second Intifada."¹⁵⁶

- (11) Sultan Abu Al Einein, Fatah Secretary General in Lebanon stated: *"Yasser Arafat used to condemn Martyrdom operations. He used to condemn these operations in very severe terms, but at the same time, it is clearly determined that the Martyr Yasser Arafat financed these military operations."*¹⁵⁷
- (12) Yasser Arafat: *"We know only one word: jihad, jihad, jihad. When we stopped the intifada, we did not stop the jihad for the establishment of a Palestinian State whose capital is Jerusalem. And we are now entering the phase of the great jihad prior to the establishment of an independent Palestinian state whose capital is Jerusalem."*¹⁵⁸
- (13) Maslama Thabet, Palestinian terrorist group leader said: *"He is following the orders of Palestinian leader Yasser Arafat. 'Our group is an integral part of Fatah.' ... 'Fatah, headed by Arafat, is the largest group in the Palestinian Authority.' ... 'Our commander is Yasser Arafat himself.'"*¹⁵⁹
- (14) Mohammed Odwan, Arafat's foreign media spokesman, confirms: *"[T]he brigade is loyal to President Arafat." ... "They are working for the interests of the Palestinian people" and they "are fighting because they think these types of operations will push forward their independence and dream of freedom."*¹⁶⁰
- (15) In a televised address Arafat urged Palestinians to *"sacrifice themselves as martyrs in Jihad (holy war) for Palestine."*¹⁶¹

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *In the Words of Arafat*, N.Y. TIMES, Aug. 4, 1997, <http://www.nytimes.com/1997/08/04/world/in-the-words-of-arafat.html>.

¹⁵⁹ Matthew Kalman, *Terrorist Says Orders Come from Arafat*, USA TODAY, Mar. 14, 2002, <http://usatoday30.usatoday.com/news/world/2002/03/14/usat-brigades.htm>

¹⁶⁰ *Id.*

¹⁶¹ *See id.*

- (16) Yasir Arafat has called Palestinian children “‘generals of the Intifada,’ and those ‘who throw the stones to defend Jerusalem, the Muslims, and the holy places’.”¹⁶²

These words uttered from President Yasser Arafat, his widow, and members of his inner governmental leadership circle, and other Palestinians speak volumes about his responsibility for the deaths of innocent civilians during the Second Intifada. Clearly, as the President of the PA, he bears direct responsibility for directing and inciting illegal terrorist violence.

VI. FINANCES OF THE PLO AND ARAFAT

“[W]hile Arafat bought stability and shored up his own position of leadership, he also bought terrorism, corruption and a continuing struggle against Israel.”¹⁶³
-Ambassador Edward S. Walker, Jr.

Not surprisingly, President Arafat was engaged in massive corruption when it came to receiving and paying out money associated with the functions of government. Following the money trail reveals that the PA’s finances and Yasser Arafat’s personal funds were so intertwined that there was apparently no distinction.¹⁶⁴ How Arafat used the money to promote terror, is best summed up by Ambassador Edward S. Walker, Jr., president of the Middle East Institute, former assistant Secretary of State for Near East Affairs, and former U.S. ambassador to Israel and Egypt. Ambassador Walker related that “while Arafat bought stability and shored up his own position of leadership, he also bought terrorism, corruption and a continuing struggle against Israel.”¹⁶⁵ Walker also endorses the view that “according to Palestinians who sat in on decisive meetings with Arafat, it was Arafat’s design and money that triggered and sustained the intifada after Camp David failure, not the visit of Ariel Sharon to the Temple Mount.”¹⁶⁶

¹⁶² See H. R. Con. Res. 202, 107th Cong. (2001).

¹⁶³ See Claude Salhani, *Show Me the Money*, WASH. TIMES, Nov. 21, 2004, <http://www.washingtontimes.com/news/2004/nov/21/20041121-105705-7259r/>.

¹⁶⁴ See *id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

In 2003, during the Second Intifada, the Arafat/PLO fortune was estimated by *Forbes* magazine to be \$300 million in hidden offshore accounts alone.¹⁶⁷ The *Forbes* piece further pointed out that “[m]oney keeps Arafat in power ...”¹⁶⁸ with “\$5.5 billion in international aid that has flowed into the PA since 1994.”¹⁶⁹ In fact, Arafat “appears to have overseen virtually all disbursements, from \$600 payments to alleged terrorists and \$1,500 in ‘tuition’ for security officers, to \$10 million, reportedly paid by a company controlled by friends of Arafat, for a 50-ton shipment of weapons from Iran.”¹⁷⁰ One recipient was the Al-Aqsa Martyrs Brigade, a designated FTO, whose members received salaries from this money, including a senior leader of the brigade – Nasser Awes.¹⁷¹

CONCLUSION

*“Right before I left office, Arafat, in one of our last conversations, thanked me for all my efforts and told me what a great man I was. “Mr. Chairman,” I replied, “I am not a great man. I am a failure, and you have made me one.” I warned Arafat that he was single-handedly electing Sharon and that he would reap the whirlwind.”*¹⁷²

-President Bill Clinton

Yasser Arafat was the President of the Palestinian National Authority and recognized leader of the Palestinian people. At the time of the Second Intifada, the Yasser Arafat and his PA controlled 95% of the Palestinian people, had operational control over a robust Palestinian police force almost twice the size allowed for in the Oslo Accords, and maintained absolute control over the media. There is no question that in this capacity he financed,

¹⁶⁷ See Nathan Vardi, *Auditing Arafat*, FORBES, Mar. 17, 2003, <http://www.forbes.com/forbes/2003/0317/049.html>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See *id.*

¹⁷¹ See Matthew Kalman, *Terrorist Says Orders Come from Arafat*, USA TODAY, Mar. 14, 2002, <http://usatoday30.usatoday.com/news/world/2002/03/14/usat-brigades.htm>.

¹⁷² See BILL CLINTON, MY LIFE 915 (2005) (discussing former President Bill Clinton on Arafat's refusal to sign a peace agreement at the Camp David Summit).

planned, and oversaw the murders of hundreds of innocent civilians in Israel during the Second Intifada. Fortunately, since his death in 2004, a conclusive number of those in Arafat's senior leadership have now spoken out, assigning direct responsibility for the horrific terror attacks against civilians in Israel during the Second Intifada to Arafat and his regime.

Amazingly, despite the simple facts and the application of common sense to those facts, apologists for Yasser Arafat still maintain the false narrative that all the many acts of terrorism during the Second Intifada came entirely from "rogue" Palestinian terrorist factions which were beyond Arafat's command and control. Again, the facts of the matter speak otherwise. As former U.S. Secretary of State Colin Powell observed about Yasser Arafat: "[Arafat] 'cannot engage with us and others in the pursuit of peace, and at the same time permit or tolerate continued violence and terror.'"¹⁷³ Since President Yasser Arafat never attempted to annul or disavow the Palestinian Charter with respect to the articles calling for the destruction of Israel,¹⁷⁴ such duplicity is not surprising.

Throughout the Second Intifada, there can be doubt as to who was in control and whether the regime was aware of the terror attacks against civilians. A Fatah Central Committee member in December 2000 told the PA-run *Al Hayat Al Jadida* that "the leadership of the PA remained the source of authority, and it alone was the factor capable of leading the operations of the Intifada throughout the homeland. I can say for certain that brother Abu-Ammar [Yasser Arafat] is the ultimate authority for all operations, and whoever thinks otherwise, does not know what is going on ..."¹⁷⁵

At the end of the day, in order for the plaintiffs in *Sokolow* to succeed in the subject civil action, it must be demonstrated that the PLO and the Fatah party, both under the effective control of Yasser Arafat, were responsible for the terror attacks during the Second Intifada. Because the defendants acted to avoid accountability, as is the pattern for all regimes that sponsor or

¹⁷³ CAROL MIGDALOVITZ, CONG. RESEARCH SERV. IB91137, THE MIDDLE EAST PEACE TALKS 4 (2005).

¹⁷⁴ See Joel Fishman, *Palestinian Incitement: The Real 'Deal Breaker'*, 5 ISRAEL J. OF FOREIGN AFF. 1, 50 (2011).

¹⁷⁵ MEMRI, Special Dispatch No. 165: *A Fatah Official on the Intifada and Its Goals* (Dec. 13, 2000), <http://www.memri.org/report/en/0/0/0/0/0/402.htm>.

support terrorism, this task is difficult. As this paper has demonstrated, however, given the length of the Second Intifada and the number of terror attacks, the fingerprints are massive and the case stands as an ideal illustration of using civil suits to bring terrorists to account.¹⁷⁶ The *Sokolow* case has the potential to do much good in the quest for justice and deterrence.

¹⁷⁶ See Generally Jeffrey Addicott, *American Punitive Damages vs. Compensatory Damages in Promoting Enforcement in Democratic Nations of Civil Judgments to Deter State-Sponsors of Terrorism*, 5 UNIV. OF MASS. ROUNDTABLE SYMPOSIUM L. J. 89 (2010).